

REMARKS/ARGUMENTS

In the restriction/election of species requirement dated January 15, 2009, the Examiner delineated the following inventions as being patentably distinct.

Group I: Claims 1-6, 12 drawn to a light emitting material for an electroluminescent device.

Group II: Claims 7-11, drawn to an organic electroluminescent device.

The Examiner further required the election of a single species as set forth on page 3 of the Office Action. Accordingly, Applicants elect the compound

(1) AN6

(2) Claims 2-4

(3) A^1 and A^2 are 2-naphthyl group

Ar^1 is a hydrogen atom

Ar^2 is a phenyl group and

R^9 and R^{10} are a hydrogen atom.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. §803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions that the claims of the restricted groups are patentably distinct.

Applicants submit that while PCT Rule 13.1 and 13.2 are applicable 37 C.F.R. §1.475(e) provide, in relevant part, that “a national stage application containing claims to different categories of invention will be considered to have unity of invention, if the claims are drawn to products and the use thereof. The determination of whether a group of inventions is so linked as to form a single general inventive concept should be made without regard to whether the inventions are claimed as separate claims or as alternatives within a single claim. In fact, the International Search Authority has searched all of the claims

together. As the Office has not shown any evidence that a restriction should now be required when the International Examination Report did not, the restriction is believed to be improper.

Further, M.P.E.P. §803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

For the reasons recited above, Applicants request that the Restriction Requirement be withdrawn.

In chemical cases a specified group of materials which do not necessarily belong to an otherwise class can be claimed together employing “Markush” language. The “Markush” practice sanctions the claiming together operable substances which could not be defined by generic language but which, nevertheless, have a community of chemical or physical characteristics. The members of the Markush group need only possess at least one property in common which is mainly responsible for their function in the claimed relationship. The same utility is a generic sense suffices.

Applicants request that if the elected invention is found allowable, withdrawn Group II, which includes the limitations of the allowable claims, be rejoined.

Applicants further request that should the elected species be found allowable, the Examiner expand the search to include the non-elected species.

Divisional applications filed thereafter claiming the non-elected subject matter should not be subject to double patenting grounds of rejection, 35 U.S.C. §121, In re Joyce, (Commr. Pats. 1957) 115 USPQ 412.

Applicants submit that the above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.

Respectfully submitted,

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